

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: DAVOL, INC./C.R. BARD, INC.,
POLYPROPYLENE HERNIA MESH
PRODUCTS LIABILITY LITIGATION

Case No. 2:18-md-2846

JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

This document relates to:

Gee v. CR Bard et al.,
Case No. 2:20-cv-3763

**OPINION & ORDER DISMISSING MOTION TO DISMISS (ECF No. 8) AS
MOOT**

This is a products liability case in a multidistrict litigation alleging “that defects in defendants’ polypropylene hernia mesh products can lead to complications when implanted in patients, including adhesions, damage to organs, inflammatory and allergic responses, foreign body rejection, migration of the mesh, and infections.” (No. 2:18-md-02846, ECF No. 1 at PageID #1–2.)¹ Plaintiff Oliver Gee pleads various medical device torts against Defendants Ethicon Inc., John & Johnson, Inc., and Davol, Inc. based on the Ventralight ST device and the Physiomesh Flexible Composite Mesh implanted in Plaintiff. (ECF No. 14.)

Plaintiff filed his complaint in the Western District of North Carolina on June 24, 2020. (ECF No. 1.) The Judicial Panel on Multidistrict Litigation ordered that Plaintiff’s case be transferred to this Court shortly after. (ECF Nos. 2, 3.) On August 26, 2020 Defendants Ethicon, Inc. and Johnson & Johnson filed a motion to dismiss. (ECF No. 8.) Plaintiff then filed an amended complaint on September 14, 2020. (ECF No. 14.) Defendants Ethicon, Inc. and Johnson & Johnson answered. (ECF Nos. 15, 16.)

¹ Unless otherwise noted, record citations are to the docket for this case, No. 20-cv-159.

Defendants', Ethicon, Inc. and Johnson & Johnson, motion to dismiss is moot. Federal Rule of Civil Procedure 15 permits a party to file an amended pleading once as of right within twenty-one days of service or twenty-one days after service of a responsive pleading when a responsive pleading is required. Fed. R. Civ. P. 15(a)(1). Plaintiff filed his amended complaint nineteen days after the motion to dismiss was filed. Therefore, the amended complaint is the operative complaint, rendering the motion to dismiss the first complaint moot.

Accordingly, Defendants', Ethicon, Inc. and Johnson & Johnson, motion to dismiss (ECF No. 8) is **DENIED AS MOOT**.

IT IS SO ORDERED.

Date: November 24, 2020

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

s/Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE